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Supreme Court, U.S.
FILED

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Docket No. ____ OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WALLACE
v.
FED. JUDGES of US DIST. CT., et al.,

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN WALLACE, Pro Se Petitioner
P.O. Box 8732, Allentown, PA 18105-8732
Phone: 484-951-5803

VIRGINIA POWEL, Assistant US Attorney

(Related to EDPA Civil No. 06-01649
Third Circuit No. 07-1316)

Deprivation of Rights, Bivens Action, pursuant to
Bivens v. Six Unknown Named Agents of the Federal
Bureau of Narcotics,
403 U.S. 388 (1971)

QUESTIONS PRESENTED FOR REVIEW

1. Does the total body of law in context place Judges "above the law" for just prosecution after intentionally depriving a litigant of constitutionally guaranteed Rights in their Court (when other Judges have been impeached for the same)?

2. When Judges on the bench during a proceeding intentionally accept evidence known to be fraudulent and rule against the victim of the fraudulent evidence, are their Courts considered to have broken down and their decisions of no effect?

3. When Judges act in concert with private actor attorneys who through fraud cause breakdown of their Courts, do the private actor attorneys

and their constituents become "state actors" because of their "common cause" against the victim of their fraud?

4. May Federal Courts refuse to accept cases against errant Judges who intentionally deprive of Rights in their Courts when the record supports their deprivation, and Judicial disciplinary action exists behind the scenes?

5. May Judges intentionally deprive of constitutional Rights in their Courts and remain immune from prosecution?

6. Has the Supreme Court in our era dealt with Judges who intentionally deprive of Rights in their Courts, accept fraudulent evidence, and whose Courts break down, or have such Judges gained unofficial "immunity"?

7. **Does Osei-Afriyie v. Med. Coll. Of Pa., 937 F.2d 876 (3rd Cir. 1991) prevent Petitioner from being main Pro Se Petitioner and representing his adult fully competent Wife, or must she submit her own separate documents?**

8. **Do District Courts have the right to deny FRCP Rule 60(b)(3) claims of redress from fraud when the record contains evidence of the fraud for anyone to see it?**

LIST OF PARTIES

Petitioner:
John Wallace
Margaret Wallace, Wife

Respondents:
U.S. District Court, EDPA
Charles Wiener, Judge (since deceased)
R. Barclay Surrick, Judge
Commonwealth Court of PA
Doris A. Smith-Ribner, Judge
Dan Pellegrini, Judge
Renée Cohn Jubelirer, Judge
PA Unemployment Compensation Board of Review
William A. Hawkins, Chairman
Eileen B. Melvin, Member
Richard W. Bloomingdale, Member
PA Unemployment Compensation Referee's Office
S. Harold Geld, Referee
Allentown PA Unemployment Comp Service Center
Unknown Claims Examiner(s)
Graphic Management Associates (GMA) (mfg. co.)
Management and ownership at all levels
Randy Seidel, CEO (presently fromer CEO)
Steve Garza, former Director of Operations
Stevens & Lee (law firm representing GMA)
Management and ownership at all levels
R. Michael Carr, Attorney

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BASIS FOR JURISDICTION

Rehearing en banc in 07-1316 by the Third Circuit Court was not sought.

Judgment by the Third Circuit Court in 07-1316 was entered 26 March 2008. The Third Circuit exercised jurisdiction under 28 U.S.C. § 1291.

The District Court had jurisdiction under 28 U.S.C. § 1331, Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and 42 U.S.C. §§ 1983, 1985, 1986.

The statutory provision conferring jurisdiction to review the judgment in question on this Court on a writ of certiorari is 28 U.S.C. § 2101(e).

CONSTITUTIONAL PROVISIONS/STATUTES

United States Constitution, Fifth Amendment

United States Constitution, Fourteenth Amendment

STATEMENT OF CASE

This petition seeks review of a decision of the United States Court of Appeals for the Third Circuit which exercised jurisdiction to review under 28 U.S.C. § 1291, holding the appeal was from the final order of a District Court and was an appeal as of Right under Rule 3 of the FRAP.

The District Court had jurisdiction pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), 42 U.S.C. §§ 1983, 1985, 1986, Federal Question Jurisdiction, and the Fifth, Fourteenth and other Amendments of the United States Constitution, specifically Due Process of Law/ Equal Protection.

The District Court case 2006 CV-1649 was entered 20 April 2006.

Judges whose Courts have broken down by knowingly, wilfully, and intentionally acquiescing to multiple frauds of the opposing party's attorney over a period of months, and who are incapacitated and unable to address the issues at hand according to clearly established law, lack jurisdiction in the case at hand, particularly so when the record supports the frauds having been exposed and the Judges refuse just recusal for cause.

Federal Judge Wiener elected involuntary recusal with much grumbling at age 82 when his Court broke down and he would not address multiple exposed attorney frauds in the record as Chambers v. Nasco required.

Federal Judge Surrickcleverly circumvented Mandamus by dismissing the case while the

Mandamus proceeding was pending in the Third Circuit Court. He knowingly, wilfully, and intentionally acquiesced to multiple exposed attorney frauds on his Court against the Plaintiff, refusing even to admit they existed in the record. It is interesting that the form of his name, R. Barclay Surrick, is similar to GMA's attorney R. Michael Carr, who perpetrated the frauds.

The same Attorney, R. Michael Carr, to defeat the Plaintiff in State actions for unemployment compensation for unlawful termination due to sexual harassment (hostile workplace) appeared at hearings for unemployment compensation. State actors acquiesced to Attorney Carr's frauds on their State agency and Courts. The case reached PA Commonwealth Court, where in spite of Plaintiff's

exposure of Attorney Carr's frauds, the State Judges acquiesced to his frauds on their Courts.

Attorney Carr is credited with causing the breakdown of no fewer than ten (10) Federal and State Courts. All Judges in this case knowingly, wilfully, and intentionally acquiesced to his multiple frauds on their Courts in spite of being warned in advance by the Plaintiff. The record in each case supports Plaintiff's exposure of multiple frauds, and the Judges could have checked the record.

Before this Court are issues: (1) Judges who knowingly, wilfully, and intentionally acquiesce to attorney fraud on their Courts and rule against the victim of those frauds lack jurisdiction as proper Courts of law and their rulings are invalid, (2) such Judges lack absolute immunity and can be sued

under Bivens for depriving of constitutional Rights, (3) Circuit Courts cannot cover up for such Judges by threatening not to hear legitimate cases against Rights depriving Judges, and (4) suit by a litigant is a public expression of the private Judicial disciplinary process, and is a valid way of dealing with incapacitated Judges whose Courts have broken down and whoare acting under color of law since they lack proper legal jurisdiction.

This Court also has power independently to deal with Attorney Carr who has set the all-time record of causing no fewer that ten (10) Federal and State Courts to break down from his attorney fraud.

Judges too "nice" to deal with fraudsters need guidance from this Court above what Chambers provides.

ARGUMENT

Do Judges whose Courts have broken down from failure to deal with attorney fraud on them and who render flawed under color of law decisions based on exposed fraud lack jurisdiction? Do their orders issued after their Courts broke down have any validity under law?

Or do incapacitated Judges who knowingly acquiesce to exposed attorney fraud in the record and intentionally violate constitutional Rights in Court enjoy absolute immunity from prosecution in spite of Chambers, the Third Circuit's Rules of Attorney Disciplinary Enforcement, FRCP Rule 60(b)(3), and the total body of law?

Are attorneys permitted to lead Judges captive at will because they see the Judges as weak?

Judges like to quote from Stump to cover their incapicities and inability to deal with issues that are "unpleasant", believing that a single sentence in Stump grants them absolute immunity under any conceivable circumstance.

However, the total body of law taken in context shows Judges, the President, anyone, everyone, can be prosecuted for just cause under the right set of conditions. This is because no man, including Judges, is above the law:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. United States v. Lee, 106 U.S. [196,] 220 [(1882)].

Stare decisis is not overruled or supplanted by a few words from Stump or others.

Briscoe v. LaHue, 460 U.S. 325 (1983)

establishes that even Judges may be prosecuted criminally for deprivation of Rights:

> Finally, in those cases in which the judicial process fails, the public is not powerless to punish misconduct. Like prosecutors and judges, official witnesses may be punished criminally for willful deprivations of constitutional rights under 18 U.S.C. 242.

If criminal punishment exists for wilful deprivation of constitutional Rights, civil accountability must also exist. This is even more so because the U.S. Attorney's Office will not enter a criminal action against Judges, nor will they even investigate.

The only recourse left to the "public" (in Briscoe) is a civil action which can be entered Pro Se in spite of the U.S. Attorney's Office.

Barring a Pro Se civil action against Judges who wilfully deprivive of constitutional Rights, the words in Briscoe are "hot air" from this Court because "the public is [ ] powerless to punish misconduct" of

ethically challenged Judges too weak to deal with criminal acts of attorneys against them, and who instead rule against victims of attorney frauds, depriving them of Rights.

As the FTCA (Federal Torts Claims Act) and Bivens are parallel remedies, and Bivens and 42 U.S.C. § 1983 are also parallel remedies, so impeachment of a Judge by Congress, 18 U.S.C. § 242, and a Pro Se civil action must also be parallel remedies. However, the only course open to a private litigant is a Pro Se civil action, and a private litigant represents the"public" in Briscoe.

If another route to prosecute Rights depriving Judges whose Courts have broken down and who are

incapacitated exists for the "public", this Court should specify what it is. In actuality, no route in law exists for the "public" to prosecute such Rights deprivers who knowingly permit attorney fraud.

As Bivens, establishes, an "agent acting in the name of the United States possesses 'far greater capacity for harm' than individual trespasser acting on his own" (quoted in Briscoe).

> **Even judges, cloaked with absolute civil immunity for centuries, could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. 242, the criminal analog of 1983**. O'Shea v. Littleton, 414 U.S. 488, 503 (1974); cf. Gravel v. United States, 408 U.S. 606, 627 (1972). **The prosecutor would fare no better for his willful acts**. Imbler v. Pachtman, District Attorney, 424 U.S. 409 (1976)

Justice Douglas in dissenting in Pierson said:

I do not think that all judges, under all circumstances, no matter how outrageous their conduct are immune from suit under 17 Stat. 13, 42 U. S. C. § 1983.

It was often noted that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress." Cong. Globe, 42d Cong., 1st Sess., 374.

In Ex parte Virginia, 100 U.S. 339, the Court held that a judge who excluded Negroes from juries could be held liable under the Act of March 1, 1875 (18 Stat. 335), one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function. But it went on to state that the judge would be liable under the statute even if his actions were judicial.

We should, of course, not protect a member of the judiciary "who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good." Gregoire v. Biddle, 177 F.2d 579, 581. To deny recovery to a person injured by the ruling of a judge

acting for personal gain or out of personal motives would be "monstrous."

This is not to say that a judge who makes an honest mistake should be subjected to civil liability. It is necessary to exempt judges from liability for the consequences of their honest mistakes.

But that is far different from saying that a judge shall be immune from the consequences of any of his judicial actions, and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights. What about the judge who knowingly turns a trial into a "kangaroo" court?... The plight of the oppressed is indeed serious.

A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., Ex parte Virginia, 100 U.S. 339; 2 Harper & James, The Law of Torts 1642-1643 (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices.

Furthermore:

> [T]ampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Id. [Hazel-Atlas, 322 U.S.], at 246.

> Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, at 580. Chambers v. Nasco, Inc., 501 U.S. 32 (1991)

This applies to Judges and fraudster attorneys who caused breakdown of Courts. These Judges act to destroy the Justice System that pays them.

This Court has held in Anderson v. Creighton, 483 U.S. 635 (1987):

> [T]he right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right.

Judges acquiescing to fraud violate the Due Process Clause of the Fifth Amendment. Pierson does not save them. The Third Circuit has clearly defined "errors" that occur during a proceeding:

> The Supreme Court has distinguished two kinds of constitutional error at trial: structural error and trial error. A structural error compromises the entire trial; it requires reversal because it involves a deprivation of a constitutional protection so basic that in its absence, "'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.'" Arizona v. Fulminante , 499 U.S. 279, 310 (1991) (citation omitted) . Examples of structural error are a biased judge, Tumey v. Ohio , 273 U.S. 510 (1927), ... Structural error cannot be harmless; Robinson v. Del Tufo, Attorney General of NJ, 92-5667 (Third Circuit)

Plaintiff's cases in District and State Court were so flawed by circumstances of attorney fraud (same attorney Carr) and Judges whose Courts broke

down from it that none of the proceedings was "fundamentally fair".

In essence this Court has already ruled in Petetioners' favor because of "structural error", but must still rule on other issues of how the "public" can handle Judges who knowingly acquiesce to attorney fraud, deprive of Rights, are incapacitated and whose Courts break down, whether their orders are lawful or void, and if they lack jurisdiction under these conditions.

This Court must also be a role model to Courts of the world.

Using Supreme Court precedent, the Third Circuit has said:

1. "A structural error compromises the entire trial."

2. "[I]t requires reversal."

3. "[I]t involves a deprivation of a constitutional protection so basic."

4. "Examples of structural error are a biased judge."

5. "Structural error cannot be harmless."

6. Regarding adjudication , no adjudication "may be regarded as fundamentally fair" when it contains structural error.

However, presented these facts, the Third Circuit did not reverse the District Court's errors. They agreed with them contrary to their precedent.

United States v. Salerno, 481 U.S. 739 (1987) establishes:

> The Due Process Clause of the Fifth Amendment provides that "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." This Court

> has held that the Due Process Clause protects individuals against two types of government action. So-called "substantive due process" prevents the government from engaging in conduct that "shocks the conscience," Rochin v. California, 342 U.S. 165, 172 (1952), or interferes with rights "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325 -326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). This requirement has traditionally been referred to as "procedural" due process.

This includes being deprived of Due Process by Judges during proceedings. Petitioners were deprived of Substantive and Procedural Due Process in Courts that had broken down.

In Mireles v. Waco, 502 U.S. 9 (1991):

> Judicial immunity is an immunity from suit, not just from ultimate assessment of damages, and it can be overcome only if a judge's actions are nonjudicial or were taken in the complete absence of all jurisdiction.

> First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Forrester v. White, 484 U.S., at 227 -229; Stump v. Sparkman, 435 U.S., at 360 . Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id., at 356-357; Bradley v. Fisher, 13 Wall., at 351.

A Judge ruling against the victim of fraud and whose Court has broken down due to the fraudster lacks jurisdiction. His orders are of no validity and he is subject to prosecution and standing trial, whether criminal or civil. He no longer represents the Justice System. He is no longer "impartial", but incapacitated to render justice and uphold the law.

In Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), this Court decided:

> In the present case, the Court of Appeals for the Fifth Circuit concluded that a violation of 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge,

> or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances....We granted certiorari to consider its construction of 455(a) as well as its remedial decision. 480 U.S. 915 (1987). We now affirm.

A Reasonable Person, assessing the several Judges acquiescence to attorney fraud and their ruling against Petitioners would conclude all Judges should recuse. Indeed, Federal Judge Wiener did recuse involuntarily when asked. No other Judges recused though their acts constituted "appearance of impropriety". They should not have continued on the cases and are subject to suit.

In Davidson v. Cannon, 474 U.S. 344 (1986) "the sort of abusive government conduct that the Due Process Clause was designed to prevent" actually occurred in the several Courts themselves by the very

Judges acquiescing to fraud and then ruling against Petitioner.

In Mitchell v. Forsyth, 472 U.S. 511 (1985)

JUSTICE STEVENS, concurring in the judgment, said, [Footnote 7] Cf. Pierson v. Ray, 386 U.S. 547, 554 (1967) ("[A judge's] errors may be corrected on appeal.... However, this did not happen in the Third Circuit Court which upheld the several Judges' acts of acquiescence to fraud, contrary to their Rules of Attorney Disciplinary Enforcement, FRCP Rule 60(b)(3), and this Court's ruling in Chambers.

Moreover:

> In numerous decisions, this Court has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws. Davis v. Passman, 442 U.S. 228 (1979).

The decision to recuse is simple enough:

1. "[W]hat matters is not the reality of bias or prejudice but its appearance." Liteky v. United States, 114 S. Ct. 1147, 1154 (1994).

2. If the question of whether Section 455(a) requires disqualification is a close one, the balance tips in favor of recusal. United States v. Dandy, 998 F.2d 1344, 1349 (6th Cir. 1993), cert. denied, 114 S. Ct. 1188 (1994).

Judges who cannot handle certain matters before them must recuse themselves so that justice is done.

Canon 2 of the Code of Conduct for United States Judges states:

> The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

The Code for Pennsylvania Judges is similar.

Acquiescence to fraud shows impaired competence.

Imbler v. Pachtman, District Attorney, 424 U.S. 409 (1976) holds:

> As a matter of principle, we perceive no less an infringement of a defendant's rights by the knowing use of perjured testimony than by the deliberate withholding of exculpatory information. The conduct in either case is reprehensible, warranting criminal prosecution as well as disbarment. See supra, at 429 nn. 29 and 30.

How can the knowing use of attorney fraud be any less condemning to a Judge who uses it to rule against the victim of that fraud in retaliation?

Justice Douglas rightly said in Pierson:

> What about the judge who knowingly turns a trial into a "kangaroo" court?... The plight of the oppressed is indeed serious.

The conditions of Mitchell v. Forsyth, 472 U.S. 511 (1985) cited by JUSTICE STEVENS do not always occur: "[A judge's] errors may be corrected on appeal." The Appellate Court corrected nothing.

Davis v. Passman, 442 U.S. 228 (1979) holds:

> Bivens, 403 U.S., at 396 , holds that in appropriate circumstances a federal district court may provide relief in damages for the violation of constitutional rights if there are "no special factors counselling hesitation in the absence of affirmative action by Congress." See Butz v. Economou, 438 U.S., at 504 .

Federal District Court is not the place where Rights should be deprived so suit must be brought against Judges whose Courts have broken down through acquiescence to attorney fraud.

This Court realizes that Judges arise from attorneys, so Judges may "favor" attorneys above Pro Se litigants and tolerate all manner of "abuse" from attorneys without question. The Courts of such Judges have broken down. They no longer qualify as Judges, but incapacitated beings unable to use the law properly.

REASONS FOR ISSUANCE OF THE WRIT

1. Pursuant to Rule 10(a) the Third Circuit Court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power" and has (a) placed Judges "above the law", (b) permitted attorney fraud on Courts that have broken down from it, (c) criticized Petitioner for upholding the law, (d) disregarded their own Rules of Attorney Disciplinary Enforcement, FRCP Rule 60(b)(3), and this Court's ruling in Chambers, and (e) has disregarded Pierson v. Ray, 386 U.S. 547, 554 (1967) ("[A judge's] errors may be corrected on appeal." by affirming them.

2. Pursuant to Rule 10(c) the Third Circuit Court "has decided [] important federal question[s] in a way that conflicts with relevant decisions of this Court". They have (a) acquiesced to breakdown of Courts, (b) affirmed legitimacy of orders of Judges incapacitated by fraud, (c) permitted multiple frauds (in the record) of Attorney Carr who caused the breakdown of no fewer than 10 Courts to stand and (d) ruled against the victim of those frauds.

3. Federal and State Court Judiciary are more and more given to corruption, do not deal with corruption, accept corruption, and cover up the corruption of their fellows, thinking themselves "above the law". <u>They need proper guidance from this Court</u>.

4. The total body of law permits civil actions against Judges for deprivation of basic constitutional Rights. This is the civil counterpart of 18 U.S.C. § 242 addressed by Bivens, the FTCA, etc. by the public.

5. When lawlessness abounds in Courts that have broken down, a standard must be raised against it since the work of Justices/ Judges of integrity is at risk of being discarded.

6. The Third Circuit Court panel was too "timid" to deal with the issues, and warned Petitioner future cases brought against crooked Judges who are "immune" could be dismissed. This is the state to which law has sunk, that crime should be "winked" at and accepted in Courts of "law", even Circuit Courts.

7. Government will become increasingly corrupt and justice will become rare if this Court does not deal with corruption of this magnitude fearlessly. (The news shows Government is very corrupt and becoming more corrupt.)

This Writ should issue because the law is increasingly disrespected by attorneys and Judges themselves. The fact 10 Judges should knowingly accept frauds of the same attorney (Carr) and rule against the Pro Se victim of those frauds without verifying the records shows Judges are not interested in justice, but in supporting attorneys from whom they arise, not law.

The Justice System was not set up to rule under color of law. Judges whose Courts have broken down are no longer Judges of the law.

Even Appellate Courts cannot deal with the issues because they (Judges) arise from attorneys.

Judges are not above the law, but subject to it like anyone for intentional deprivation of Rights. When their Courts break down from wilfully accepting fraud, they lack jurisdiction. Their comfort that a few cases seem to grant them immunity to deprive of Rights is misplaced when the entire body of law is considered in context. This Court must show these Judges are not above the law to deprive of constitutional Rights in their very Courts because they lack jurisdiction.

Respectfully submitted,

John Wallace,
Pro Se Petitioner

Date: 23 June 2008

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-1316

JOHN WALLACE, Appellant

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA; STATE JUDGES OF COMMONWEALTH COURT OF PA; GRAPHIC MANAGEMENT ASSOC., and STEVENS & LEE

On Appeal from the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 06-1649)
District Judge: Honorable James T. Giles

Submitted Under Third Circuit LAR 34.1(a)

Before: AMBRO, FUENTES and FISHER,
Circuit Judges

JUDGMENT

This cause came to be heard on the record from the United States District for the Eastern District of Pennsylvania and was submitted pursuant to LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered January 4, 2007, be and the same is hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: March 26, 2008

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-1316

JOHN WALLACE, Appellant

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA; STATE JUDGES OF COMMONWEALTH COURT OF PA; GRAPHIC MANAGEMENT ASSOC., and STEVENS & LEE

On Appeal from the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 06-1649)
District Judge: Honorable James T. Giles

Submitted Under Third Circuit LAR 34.1(a)

Before: AMBRO, FUENTES and FISHER,
Circuit Judges

(Opinion filed: March 26, 2008)

OPINION

PER CURIAM

John Wallace filed a civil rights action against the Judges of the United States District Court for the Eastern District of Pennsylvania ("federal judges"), the Judges of the Commonwealth Court of Pennsylvania ("state judges"), Graphic Management Assoc. ("GMA"), and the law firm of Stevens & Lee, for alleged fraud on the state and federal courts.[1] Wallace brought this action pursuant to 42 U.S.C. § 1983 and the rule of Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

Appellant's complaint arises out of unsuccessful state and federal lawsuits that his wife Margaret brought in response to GMA's termination of employment in 2004.[2] The federal suit was assigned initially to the Honorable Charles Wiener, and then reassigned to the Honorable R. Barclay Surrick after Judge Wiener recused himself at Margaret's request. The complaint specifies six alleged instances of fraud on the state amd/or federal courts: (1) Counsel for GMA, Attorney R. Michael Carr, not a defendant in this action, allegedly substituted excerpts from the GMA Handbook, which falsely indicated to the Court that Margaret was aware of certain Handbook provisions used to justify her termination; (2) Carr allegedly submitted a prior deposition transcript in place of a subsequent

deposition transcript without the Court's knowledge or approval, simply because the latter deposition contained testimony favorable to Margaret; (3) Carr filed a motion to dismiss in which he allegedly claimed falsely that Margaret had not made out a prima facie case of employment discrimination or retaliation; (4) Carr filed a summary judgment motion in which he allegedly claimed falsely that Margaret had no cause of action, and that he quoted testimony from a deposition that the Court had ruled should not be relied upon and omitted testimony favorable to Margaret; (5) Carr filed a motion in limine to exclude evidence relating to Margaret's termination which "caused an adverse ruling by Judge Surrick"; and (6) an unidentified male cashed Margaret's 401(k) check. See Compl., pp. 48-51. Appellant asserts that

Judge Wiener, who is now deceased, both ignored and thereby acquiesced to frauds allegedly perpetrated by Carr. The District Court dismissed Wallace's suit against the state and federal judges under Fed. R. Civ. P. 12(b)(6).Wallace appealed and sought entry of judgment under Fed. R. Civ. P. 54(b) which the District Court denied. We dismissed the Appeal from that order for lack of jurisdiction. GMA and the individual defendants then moved to dismiss the complaint, and the District Court granted the motion. Wallace again appealed.

We now have jurisdiction under 28 U.S.C. § 1291. We review a District Court's dismissal under Fed. R. Civ. P. 12(b)(6) de novo. Merle v. U.S., 351 F.3d 92, 94 (3rd Cir. 2003). The District Court correctly determined that judges enjoy absolute

judicial immunity for conduct pursuant to their role as judicial officers. "A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." Stump v. Sparkman, 435 U.S. 349, 359 (1978). Accordingly, the claims against Judges Wiener and Surrick, as well as the claims against the state court judges, were properly dismissed.

The District Court also correctly dismissed the complaint as to GMA and Stevens & Lee. Neither GMA nor Stevens & Lee are state or federal actors, nor does the act of filing a pleading with a court transform a private actor into an entity acting under color of state or federal law. The complaint offers only conclusory allegations that GMA and Stevens &

Lee conspired with state and federal actors. Accordingly, Wallace's claims against GMA and Stevens & Lee were properly dismissed. Fries v. Helsper, 146 F.3rd 452, 458 (7th Cir 1998), cert. denied, 525 U.S. 930 (1998) ("Mere allegations of joint action or a conspiracy do not demonstrate that the defendants acted under color of state law and are not sufficient to survive a motion to dismiss.")[3]

Accordingly, we will affirm the judgment of the District Court.[4]

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[1]The complaint is only nominally against all judges in the Eastern District of Pennsylvania; it specifically names only Judges Wiener and Surrick. The complaint also recites grievances against several other entities and individuals, such as the Unemployment Compensation Board of Review, but these entities and individuals were never served and never entered an appearance in the District Court. Accordingly, they are not parties in this matter.

[2]As Wallace procedes pro se, he may not represent Margaret amd may only assert claims brought in his own right. See Osei-Afriyie v. Med. Coll. Of Pa., 937 F.2d 876 (3rd Cir. 1991).

[3]Should Wallace continue to file lawsuits against immune or otherwise improper defendants, the District Court or we could enter an order restricting his filing of such cases. See Chipps v. U.S. Dist. Ct. M.D. Pa., 882 F.2d 72, 73 (3rd Cir 1989).

[4]In reaching this determination, we considered the motion for summary action filed by appellees Federal Judges as well as appellant's brief. We decline to take summary action, proceeding instead under 3rd Cir. LAR 34.1(a) (1997).

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN WALLACE, ET. AL.
Plaintiffs

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA, ET. AL.
Defendants

CIVIL ACTION NO. 06-1649

ORDER

AND NOW this 12th day of July, 2006 upon consideration of federal defendants Motion to Dismiss, it is hereby

ORDERED

that said Motion is granted. The Complaint is hereby dismissed with prejudice as to the Federal Defendants, the Federal Judges of the United States

District Court, Philadelphia, the Honorable Charles Wiener (deceased) and R. Barclay Surrick, United States District Court, Eastern District of Pennsylvania. The judges are immune from lawsuit as a matter of law.

BY THE COURT:

HONORABLE JAMES T. GILES

Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN WALLACE, ET. AL.
Plaintiffs

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA, ET. AL.
Defendants

CIVIL ACTION NO. 06-1649

ORDER

AND NOW this 12th day of July, 2006 upon consideration of Pennsylvania Judicial defendants Motion to Dismiss and supporting Memorandum of Law, and any response, Plaintiffs' complaint is dismissed with prejudice. The judges are immune from lawsuit as a matter of law.

BY THE COURT:
JAMES T. GILES, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN WALLACE, ET. AL.
Plaintiffs

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA, ET. AL.
Defendants

CIVIL ACTION NO. 06-1649

ORDER

AND NOW, this 3rd day of January, 2007, upon consideration of Defendants' Stevens & Lee, P.C., Stevens & Lee Ownership and Management, R. Michael Carr, Esquire, and Graphic Management Associates, Inc.'s unopposed Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), it is hereby ORDERED that the motion is GRANTED and

Plaintiff's complaint against the aforementioned defendants is DISMISSED with prejudice. The complaint, as to [sic] relates to the above-mentioned defendants, alleges several causes of action based on conduct including the initiation of several legal actions in this court and filings made to the court. There is complete immunity to what is said and filed in this Court as it relates to a judicial proceding.

BY THE COURT:

JAMES T. GILES, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN WALLACE, ET. AL.
Plaintiffs

v.

FEDERAL JUDGES OF UNITED STATES DISTRICT COURT, PHILADELPHIA, ET. AL.
Defendants

CIVIL ACTION NO. 06-1649

ORDER

AND NOW, this 23rd day of January, 2007, upon consideration of Plaintiff's Petition to Correct Record Prior to Appeal, it is hereby ORDERED that the motion is DENIED in part and GRANTED in part.

Plaintiff is correct that he filed a response (though docketed as a "Response to Defendants' Answer") to Defendants' Stevens & Lee, P.C.,

Stevens & Lee Ownership and Management, R. Michael Carr, Esquire, and Graphic Management Associates, Inc.'s unopposed Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Defendants' Stevens & Lee, P.C. et al.'s Motion to Dismiss was GRANTED by this court, after consideration of both the Motion to Dismiss and Plaintiff's response thereto, in an order dated January 3, 2007 This order erroneously characterizes the Motion to Dismiss as "unopposed". The court provided reasoning for its decision to grant Defendants' Motion to Dismiss: "The complaint, as it relates to the above-mentioned defendants, alleges several causes of action based on conduct including the initiation of several legal actions in this court and filings made to the court. There is complete immunity to what is said and filed

in this Court as it relates to a judicial proceeding."

BY THE COURT:

JAMES T. GILES, J.